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FOREIGN SERVICE DESPATCH

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FROM : Anembassy BERN

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DESP. NO.

TO : THE DEPARTMENT OF STATE, WASHINGTON.

June 14, 1957
DATE

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| For Dept. Use Only | ACTION | DEPT. |
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SUBJECT: Legal Assistance from Switzerland and Liechtenstein

Transmitted herewith as of possible interest to the Department is a memorandum on the handling of requests for legal assistance from the governments of Switzerland and Liechtenstein. It was originally planned to use this memorandum only for the guidance of officers at the Embassy who might be called on to deal with questions concerning legal assistance. The receipt, however, of a recent inquiry from the Department of Justice in Washington about legal assistance from Liechtenstein gave rise to the thought that certain agencies in Washington, in addition to the Department, might be interested in the memorandum.

For the Ambassador:

Anthony Clinton Sweeney
Anthony Clinton Sweeney
First Secretary of Embassy

Enclosure:

Memorandum

FOR COORDINATION WITH ^{ed} State

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From Bern

MEMORANDUM

June 14, 1957

SUBJECT: Procedure for Handling Requests for Legal Assistance
from the Governments of Switzerland and Liechtenstein

Switzerland

The basic principle governing the granting of legal assistance by the Swiss Government or one of the cantonal governments to a foreign government is that the criminal act committed in a foreign jurisdiction concerning which the information is desired must also be a punishable act under Swiss law. In normal cases, the cantonal courts have final authority in deciding whether or not legal assistance should be granted (with the approval of the Federal Government). However, where there exists between Switzerland and the requesting State an extradition treaty containing a clause expressly providing for legal assistance, the Federal Government can compel the cantons to provide the assistance, if it so decides on the specific case at issue. There is no legal assistance clause in the various extradition treaties between Switzerland and the United States. Therefore, no legal basis exists on which the United States Government could demand that the Federal Government compel a canton to give legal assistance and conversely none on which the Federal Government, for its part, could take such action on a request from the United States Government.

If an agency of the United States Government desires to solicit legal assistance from the Swiss Government, a request to this effect, embodied in a formal note, should be addressed by the Embassy to the Swiss Federal Council through the Federal Department of Justice and Police. The note should state that the Embassy has been instructed by the Department of State to make the request on behalf of whatever agency is involved. In addition to listing the information desired, the request should embody (1) a written summary of when, where and how the crime(s) was (were) committed; (2) the verbatim text of those articles of the USC or the UCMJ on which the charges against the defendants are based; and (3) other pertinent supporting materials. All documents should be transmitted in triplicate in English and accompanied by translations (in duplicate) in German and French, including any letters rogatory which may be desired executed. Letters rogatory should be addressed to the "Appropriate Swiss Judicial Authorities" at Zurich, Geneva, Bern, or other cantonal capital where the court having jurisdiction has its seat.

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Legal assistance is not granted by the Swiss Government when purely political, military or fiscal (tax) crimes are concerned. In this connection, the Swiss normally require a guarantee from the requesting state that any information which they furnish concerning another type of crime will not be used to prosecute individuals who may have committed a purely political, military or fiscal crime. As the latter case occurs more frequently, it is the one usually mentioned by the Swiss.

Another guarantee normally required from the requesting state by the Swiss is that of reciprocity in the granting of legal assistance in a similar case if the Swiss Government were the requesting state. The Swiss usually ask that this guarantee include a commitment to undertake legal compulsion against state or local authorities to make them grant the required assistance, if the occasion for compulsion should arise.

Obtaining legal assistance from the Swiss insofar as information on bank accounts, deposits and withdrawals, and commercial transactions is concerned is in practice virtually impossible because of the stringent provisions of the Banking Secrecy Act. As this is a subject which has been dealt with extensively elsewhere, nothing further will be said here concerning it.

Liechtenstein

The basic principle governing the granting of legal assistance by the Government of the Principality of Liechtenstein is the same as in the case of Switzerland. As there are no cantons in Liechtenstein, the Government at Vaduz has final authority in all cases. Since there is no legal assistance clause in the extradition treaty between Liechtenstein and the United States, decisions taken by the government of the former are based on domestic laws and traditions, and it is presumed also on the traditions of international comity. The Swiss Government does not have the right of veto over decisions made on requests for legal assistance by the Liechtenstein Government, though in practice it is doubtful whether the latter would make an affirmative decision in a case when it knew the Swiss would object. In this connection, it should be remembered that Liechtenstein conducts its foreign relations through the Swiss Government.

Requests for legal assistance emanating from a United States Government agency and directed to the Government of the Principality of Liechtenstein should be embodied in a formal note (as in the case of Switzerland described above) sent by the Embassy through the Swiss Federal Department of Justice and Police in Bern, asking that Department to transmit the request through the appropriate channels to the addressee Government. In other respects, the list of items of information requested and

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other documentation should conform to the pattern described above for Switzerland.

It is understood that in the majority of cases the handling of requests for legal assistance can be expedited if an informal oral approach is made by an Embassy officer to the Liechtenstein Legation in Bern before transmission of the formal note to the Swiss Department of Justice and Police.

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